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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5701

DATE COMPLAINT FILED: January 27, 2006

DATE OF NOTIFICATION: February 2, 2006

LAST RESPONSE RECEIVED: March 24, 2006

DATE ACTIVATED: April 11, 2006

EXPIRATION OF SOL: 6/1/2006 – 6/1/2010

COMPLAINANT: Juan Vargas

RESPONDENTS: Bob Filner for Congress and Mark Pollick, in his official capacity as
Treasurer
Congressman Bob Filner
Jane Filner
Campaign Resources

RELEVANT STATUTES: 2 U.S.C. § 439a
11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Congressman Bob Filner's opponent in California's 51st District congressional primary held on June 6, 2006, Juan Vargas, filed a complaint alleging that Bob Filner For Congress ("the Committee") has been "diverting" campaign contributions to Filner's wife's "sham" company, Campaign Resources, and, thus, to the Filner household. The complainant requests an investigation as to whether Jane Filner performed *bona fide* services and in general seeks a determination that the Committee, Congressman Bob Filner, Jane Filner, and Campaign

Resources have violated the law.¹ As more fully set forth below, this Office recommends that the Commission find no reason to believe that the respondents violated 2 U.S.C. § 439a and 11 C.F.R. § 113.1(g) by converting campaign funds to "personal use" through salary payments to Campaign Resources.

II. FACTUAL SUMMARY

Jane Filner has a consulting business called "Campaign Resources." Since 1995, the Committee has paid Campaign Resources approximately \$520,000. According to disclosure reports, annual payments since 2001 have been as follows:

2001	\$42,400
2002	\$48,800
2003	\$26,500
2004	\$38,304
2005	\$52,000
2006	\$12,000 (1 st Quarter)

The descriptions in the Committee's disclosure reports state that the payments have been for "professional consulting," "fundraising," or variations of those descriptions.

The complainant claims that Campaign Resources has no business license, registration, federal tax identification number, phone number, letterhead, employees, or other clients besides the Committee. This claim is based upon a December 4, 2005, *San Diego Union-Tribune* article that discussed the Committee's payments to Congressman Filner's wife's business and reported that no public records were found that could prove the existence of Campaign Resources as a business. According to the news article, the business address is the Filner's home address in Washington, D.C.

¹ The complainant also requests that the Commission examine Filner's votes, particularly regarding the Safe Accountable Flexible Efficient Transportation Equity Act of 2005, to determine their connection to contributions and money going to his household. We make no recommendation as to the alleged connection between Filner's votes and contributions received by the Committee because this allegation is outside the Commission's jurisdiction.

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1 The respondents assert that Jane Filner established Campaign Resources as a sole
2 proprietorship in Washington, D.C., in 1995. The respondents submitted documents showing
3 that in 1995, Campaign Resources received an Employer Identification Number from the Internal
4 Revenue Service and a D.C. Business Tax Registration Number from the District of Columbia
5 Department of Finance and Revenue. Respondents also submitted a trade name registration
6 certificate for "Campaign Resources" from the D.C. Business License Center, dated December
7 12, 2005, which was a few weeks after publication of the *San Diego Union-Tribune* newspaper
8 article. Respondents explain that Jane Filner started Campaign Resources as a consulting
9 business after she left her position as the Executive Director of Democrats 2000, a national
10 political organization now known as 21st Century Democrats.

11 According to the respondents, "Ms. Filner has been responsible for all fundraising" for
12 the Committee since 1995, including drafting mail and email solicitations, ensuring their
13 regulatory compliance, planning fundraising events, and maintaining and growing the
14 Committee's database. The response further states that since 1995, Jane Filner has arranged
15 approximately 150 events for the Committee and written approximately 50 solicitation letters and
16 12 campaign newsletters. The respondents attached a sample of documents they claim Jane
17 Filner prepared, including several solicitation letters and one campaign newsletter.²

18 **III. LEGAL ANALYSIS**

19 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits the
20 conversion of campaign funds to personal use. *See* 2 U.S.C. § 439a. Generally, "personal use" is
21 defined as "a commitment, obligation or expense of any person that would exist irrespective of

² It is unclear what respondents meant when they stated that "Ms. Filner has been responsible for all fundraising" because they did not explain the Committee's payments to other fundraising vendors, as disclosed in their disclosure reports.

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1 the candidate's campaign or duties as a Federal officeholder." 11 C.F.R. § 113.1(g). The
2 regulation enumerates certain expenses that are considered per se "personal use" and, thus,
3 prohibited, including, "salary payments to a member of the candidate's family, unless the family
4 member is providing *bona fide* services to the campaign. If a family member provides *bona fide*
5 services to the campaign, any salary payment in excess of the fair market value of the services is
6 personal use." 11 C.F.R. § 113.1(g)(1)(i)(H).

7 The essence of the complaint is that Jane Filner could not have provided *bona fide*
8 services to the Committee because her business, Campaign Resources, is a "sham." The sole
9 basis for this allegation appears to be the complainant's failure to find any public records proving
10 that Campaign Resources exists as a legitimate business. Because the complainant speculates
11 that Campaign Resources has not provided *bona fide* services to the Committee, he does not
12 address whether work performed by Campaign Resources or Jane Filner was compensated at fair
13 market value.

14 Even if the complainant's inference that Jane Filner provided no *bona fide* services to the
15 Committee can be drawn from the fact that Campaign Resources has no business filings, this
16 inference is rebutted by specific information, albeit not sworn to or supported by an affidavit,
17 submitted by the respondents. First, although Campaign Resources did not file for a trade name
18 registration until after the *San Diego Union-Tribune* article, the respondents submitted copies of
19 federal and District of Columbia tax filings that were made contemporaneously with the
20 establishment of Campaign Resources in 1995. Second, respondents state that Campaign
21 Resources is a sole proprietorship, which would not be expected to have many, if any, publicly
22 available records. Third, respondents identified specific work Campaign Resources performed
23 for the Committee and attached documents they claim are examples of work performed by Jane

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Filner. While most of these documents appear to be from the 1990s, respondents do not claim that these documents comprise a comprehensive sampling of the work performed between 1995 and the present.

In addition, the respondents provided some evidence that Campaign Resources was paid fair market value for the work performed. They submitted a contemporaneous written bid from a competing political fundraising firm, which the Committee apparently solicited at around the time it entered into the contract with Campaign Resources. That consultant proposed a payment of \$4,000 a month during non-election years and \$5,000 a month during election years.³

According to the Committee's initial 1995 contract with Campaign Resources, Campaign Resources' monthly fee was to be \$4,000, for an annual salary of \$48,000. Respondents did not explain why the Committee's payments to Campaign Resources have deviated from the contract amount over the years; however, the degree of deviation does not appear unreasonable.

IV. CONCLUSION

On balance, the allegations and available information do not warrant an investigation. Despite the patchy record on both sides, it appears that respondents have provided sufficient and specific facts to rebut the complainant's allegation that Campaign Resources is a "sham." Further, there is no information presented to suggest that Campaign Resources did not do *bona fide* work or was paid more than fair market value for its work. Accordingly, this Office recommends that the Commission find no reason to believe that Bob Filner for Congress and Mark Pollick, in his official capacity as Treasurer, Congressman Bob Filner, Jane Filner, or Campaign Resources violated the Act.

³ There is not enough information available to determine whether Campaign Resources performs more or less work than proposed by the competing consultant.

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V. RECOMMENDATIONS

1. Find no reason to believe that Bob Filner for Congress and Mark Pollick, in his official capacity as Treasurer, Congressman Bob Filner, Jane Filner, or Campaign Resources violated 2 U.S.C. § 439a or 11 C.F.R. § 113.1(g) by converting campaign funds to personal use.
2. Approve the appropriate letters.
3. Close the file.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

7/10/06
Date

By: 
Ann Marie Terzaken
Assistant General Counsel


Elena Paoli
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